

# interoffice MEMORANDUM

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**TO:** Dale L. Frink, State Engineer  
Todd Sando, Assistant State Engineer and Director, Water Development Division  
Craig Odenbach, Chief, Regulatory Section

**FROM:** Carolyn Merbach, Contract Specialist

**SUBJECT:** State Water Commission Conditional Cost-Share Participation Request  
Extension and Raise of the Devils Lake Levee System, Stages 1 - III  
[SWC #416]

**DATE:** November 21, 2002

In their letter received September 7, 2002, the City of Devils Lake requested state cost participation for the next three foot raise of the Devils Lake Levee System. Following a discussion with Todd Dalziel, City Auditor, the intended request is for the City's remaining cumulative balance of the non-federal share commitment for all stages (I – III) involving the extension and raise of the original levee system. Per Session Law 2001, Appropriations, Chapter 1, Section 19. Levee Protection Funding Authority., the State Water Commission may use up to \$5,000,000 to provide cost-share for constructing and improving levees at Devils Lake

The City's original dike was constructed in 1984, offering a protection level of 1440' msl and a top elevation of 1445' msl. The Commission did not provide any funding for the original construction. As a result of the rising lake level, modification of the original dike and added protection was necessitated in 1996. The City of Devils Lake signed an agreement with the Corps of Engineers on August 12, 1996 to raise the dike protecting the City to a top elevation of 1450' msl, at which time the State Water Commission issued Construction Permit #1155.

In June of 1998, an amendment to the agreement between the City and the Corps of Engineers was signed authorizing an extension and raise of the system to a top elevation of 1454', which was later modified to a top elevation of 1457'. In January of 2003, the City of Devils Lake will sign an amendment to raise the entire levee system three feet to a protection level of 1454'/top elevation of 1460'. An application to permit this raise has been received from the City and is currently being processed.

Stage 1 of the dike protection project was planned from Highway No.19 to the north side of Frison Addition with a protection level of 1445'/top elevation of 1450'. A modification to the Stage 1 agreement extended the dike to include the stretch from County Road No. 1 to the golf course. Stage 1A raised the dike to a top elevation of 1457' from the airport to the golf course. Stage 2 included the area from Highway No. 20 South to the East Bay Ditch and was intended to be built to a top elevation of 1450'. The agreement was modified and extended the protection to Mertens Dairy. Stage 2A raised the dike to a top elevation of 1457'. The overall combined length of the Devils Lake Levee System is approximately 7.83 miles.

The City, working with the Corps of Engineers, acquired all the property needed for construction of the levee system, as well as the temporary construction easements required. Some of the property needed for placement of the dike was purchased and deeded to the City, while other property was obtained under a perpetual easement. Included in the contract costs were the pumps and buildings installed at East Bay Lift Station, 17<sup>th</sup> Street South Lift Station, Roberts Lift Station, Eagle Bend Lift Station, Creel Bay Lift Station, and the Golf Course Lift Station.

The City is currently working closely with the Corps of Engineers on land acquisitions for ponding areas, awaiting final ponding area requirements. An appraiser has been secured and is in the process of making contact with property owners in the ponding area. The Corps has a "Design Documentation Report" published that gives greater detail of the steps and design of the dike system and is available upon request.

In a letter dated December 31, 2001, Governor Hoeven requested that the Corps of Engineers investigate raising the levee system to a protection level of 1460'/top elevation of 1470', an additional 6 feet over the current protection level raise of 1454'. In response, the Corps pointed out that they had no funds available for the investigation, although funds could be provided in the 2003 Energy and Water Appropriations Bill in the General Investigations category. Additionally, Public Law 84-99 (Advanced Measures Authority) could authorize the raise of the existing levee system. However, based on the lack of an imminent risk that would require protection to an elevation above 1454', it would exceed the limits of this authority at this time.

As the Corps of Engineers continues to amend the agreement for the extension and raise of the Devils Lake Levee System, certain costs are known (Stage I and II) and some are estimated (Stage III). It is anticipated that the agreement between the Corps and the City of Devils Lake will conclude after this three foot raise, allowing for an audit of the project as described. The total known and estimated cost of the project (per the Corps current amendment to their agreement) is \$59,987,729. Stage I cost \$43,050,000 to construct and Stage II cost \$2,700,000. The land costs, surveys, legal work, etc. cost \$1,987,729 for Stages I and II. The engineering expenses, attributable to all stages, are estimated at \$3,500,000. Stage III, the raise to 1454', is estimated to cost \$8,750,000, of which \$6,750,000 is for the construction and \$2,000,000 for the acquisition of the ponding land.

The City of Devils Lake is liable for 25% of the total cost (\$14,996,932). Of the \$14,996,932, the City has collected cash contributions in the amount of \$10,922,730. Contributions consist of previous Commission funding in the amount of \$750,000, a Community Development Building Grant of \$1,400,000, Housing and Urban Development has provided \$7,000,000, and the City of Devils Lake accounts for \$1,772,730. Since the City of Devils Lake is unable to provide the funding, state assistance is requested for the required balance of \$4,074,202. No costs are considered ineligible in this project.

Upon cost-share approval and issuance of the required permit, an agreement will be entered into between the State Water Commission and the City of Devils Lake. A transfer/deposit of \$4,074,202 into the Devils Lake escrow account is expected in April of 2003. The agreement will address reimbursement to the Commission should the Corps' audit show the project cost less

than estimated. The City may request additional cost-share for an unfunded balance should the audit show overrun costs.

**Therefore, I recommend the State Water Commission conditionally approve this request by the City of Devils Lake for cost-share participation in the Extension and Raise of the Devils Lake Levee System, Stages I – III, at an amount of \$4,074,202, which is equivalent to 25% of the non-federal share less all cash contribution, from the funds appropriated to the Commission in the 2001-2003 biennium. This request is subject to the availability of funds and issuance of the required permit.**

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<i>STAGE</i>	<i>DESCRIPTION</i>	<i>PL-MSL</i>	<i>TOP-MSL</i>	<i>CONSTRUCTION AND EASEMENT COSTS</i>	<i>ENGINEERING AND LAND ACQUISITION COSTS</i>	<i>TOTAL COSTS</i>
Original	Original levee constructed in 1984	1440	1445	Not available		Does not include the original construction
Stage I	Extension and raise of original levee	1445	1450	\$43,050,000 Stage I & IA		\$43,050,000
Stage IA	Raise existing levee system	1450	1457			
Stage II	Extension of existing levee system	1445	1450	\$4,687,729 Stage II & IIA		\$4,687,729
Stage IIA	Raise of extension of Stage 2 existing levee system	1450	1457		\$3,500,000 Engineering for all stages	\$3,500,000
Stage III	Raise the entire existing levee system and land acquisition of ponding area created by system	1454	1460	\$6,750,000	\$2,000,000 Land acquisition ponding	\$8,750,000
<b>TOTALS</b>				<b>\$54,487,729</b>	<b>\$5,500,000</b>	<b>\$59,987,729</b>

